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MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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JAN 13 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

)	2 CA-MH 2010-0007
)	DEPARTMENT B
IN RE PINAL COUNTY MENTAL)	
HEALTH NO. MH-201000112)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure
)	
)	
)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Honorable Janna L. Vanderpool, Judge

VACATED

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V Á S Q U E Z, Presiding Judge.

¶1 On August 11, 2010, after a hearing on a petition for court-ordered treatment pursuant to A.R.S. § 36-533, the trial court found appellant was “persistently or acutely disabled” as a result of a mental disorder and was “unwilling or unable to accept voluntary [psychiatric] treatment,” and ordered him to receive a combination of inpatient

and outpatient treatment. On appeal, appellant contends his due process rights were violated because the state did not strictly comply with the applicable civil commitment statutes. Specifically, he argues one of the two psychiatrists who examined him did so through teleconferencing technology referred to as “Telemed” and that neither of them had conducted a “complete physical examination” as required by A.R.S. §§ 36-539(B) and 36-501(14). Based on our recent decision in *In re Pinal County Mental Health No. MH-201000029*, 225 Ariz. 500, 240 P.3d 1262 (App. 2010), upon which appellant relies extensively, we vacate the court’s order.

¶2 The record establishes that psychiatrist Michael Stumpf filed a petition for court-ordered treatment in August 2010, pursuant to § 36-533, which was supported by his affidavit and the affidavit of psychiatrist Vincent Krasevic. Neither psychiatrist stated in their affidavits that they had conducted a physical examination of appellant, and comments about their observations of appellant related to his mental status, not his physical health. Both testified at the hearing on the petition. Stumpf stated he had met with appellant twice, once before preparing his affidavit, and essentially restated and expounded upon portions of his affidavit. He explained appellant previously had been receiving court-ordered treatment but it had expired. He described appellant’s speech as nonsensical when they initially met, found appellant to be delusional, and diagnosed appellant as suffering from schizophrenia, opining appellant was persistently or acutely disabled. His testimony related to observations about appellant’s mental status; he did not mention whether he had conducted a physical examination of appellant, nor did he testify about appellant’s physical health.

¶3 Krasevic testified he had “seen” appellant remotely, through Telemed, meeting with him for about thirty minutes on August 2 and August 4, 2010. He diagnosed him as suffering from bipolar disorder, explaining there is an overlap between that disorder and schizophrenia. He described appellant as “verbose, rambling, distractible, grandiose and delusional” and agreed he was persistently or acutely disabled. When asked whether there was anything he “would miss if the person is being examined [by] telemed versus . . . in [his] office,” Krasevic responded, “No because I have a really good video equipment setup. . . . So from a mental health point of view, it’s really not a detriment.” Like Stumpf, he provided no testimony about having conducted a physical examination and made no observations relating to appellant’s physical, rather than mental, status.

¶4 Appellant argued at the end of the hearing that the petition should be dismissed because the state had failed to strictly comply with the mental health statutes, depriving him of his due process rights. He contended neither psychiatrist had conducted a physical examination as contemplated by § 36-539(B) and as defined by § 36-501(14), which requires a physician to personally examine the individual and conduct a “complete physical examination” relating to a person’s physical status, not just his mental status. He asserted that Krasevic’s evaluation was particularly insufficient because he had not only failed to conduct a complete physical examination, he had not met with appellant in person. The state disagreed, arguing an evaluation conducted through teleconferencing technology is no different than one conducted in person and the civil commitment

statutes did not require the testifying physicians to have conducted both a psychiatric and physical examination.

¶5 The trial court denied the motion to dismiss, finding the “telemedicine evaluation examination is as thorough as that contemplated by the statute and that there’s no defect . . . in the petitioner’s case due to that issue.” The court then found appellant persistently or acutely disabled as a result of a mental disorder and ordered him to undergo a combination of inpatient and outpatient treatment. Appellant subsequently filed a motion to dismiss the petition, which the court denied as not only untimely filed, but also without merit. This appeal followed.

¶6 Appellant essentially reiterates the arguments he raised below. However, he now relies extensively on *Pinal County Mental Health No. MH-201000029*, which we decided on October 6, 2010, a few months after the trial court issued its August order. He contends our decision is directly on point and requires us to vacate the court’s order. The state concedes our decision “can be read as controlling in this matter inasmuch as it found that the mental health statutes were not strictly complied with,” because Krasevic “examined the Appellant remotely by a ‘Telemed’ video conferencing system, thereby failing to conduct a complete physical examination of the Appellant as required by A.R.S. §§ 36-501(14), 36-533(B), 36-539(B).”

¶7 In *Pinal County No. MH-201000029*, we concluded that, “[t]ogether, §§ 36-533(B) and 36-501(14) require that two physicians must each personally conduct a ‘complete physical examination’ of the patient.” 225 Ariz. 500, ¶ 7, 240 P.3d at 1264; *see also In re Pinal County Mental Health No. MH-201000076*, 596 Ariz. Adv. Rep. 24,

¶¶ 4-5 (Ct. App. Nov. 22, 2010) (following *Pinal County No. MH-201000029* and vacating treatment and commitment order because psychiatrist evaluated appellant remotely through teleconferencing technology). One of the two psychiatrists in *Pinal County No. MH-201000029* had evaluated the appellant through the Telemed system and had “relied on a written report of appellant’s vital signs previously taken by a nurse practitioner, [but had] not conduct[ed] a complete physical examination himself.” 225 Ariz. 500, ¶ 21, 240 P.3d at 1268. Therefore, we concluded, the evaluation did not comply strictly with the statute. *Id.* We suggested, too, that neither psychiatrist appeared to have conducted an adequate, complete physical examination, having focused on the appellant’s “alleged mental disorder rather than his overall health.” *Id.* ¶ 21 & n.10.¹

¶8 For the same reason the evaluations in *Pinal County No. MH-201000029* and *Pinal County No. MH-201000076* did not satisfy the requirements of the relevant statutes, Krasevic’s evaluation here also was deficient. As we stated in *Pinal County No. MH-201000076*, 596 Ariz. Adv. Rep. 24, ¶ 5, “[w]hen the statutory requirements are not complied with strictly, we are required to vacate the order.” *See also In re MH 2006-*

¹We acknowledged in *Pinal County No. MH-201000029*, 225 Ariz. 500, ¶ 18, 240 P.3d at 1268, that in *In re MH 2008-000438*, 220 Ariz. 277, n.3, 205 P.3d 1124, 1127 n.3 (App. 2009), Division One of this court had stated in a footnote that a complete physical examination for purposes of the statute “is not the typical annual physical but a component of a psychiatric examination, which includes observing the patient’s demeanor and physical presentation, and can aid in diagnosis.” We additionally noted Division One subsequently reiterated “this statement without analysis” in *In re MH 2009-002120*, 225 Ariz. 284, ¶ 5, 237 P.3d 637, 640 (App. 2010). *Id.* n.8. But, we observed, “the question of what constitutes a ‘complete physical examination’ was neither squarely before the court in *MH 2008-000438* nor essential to the court’s disposition.” *Id.* ¶ 19.

000490, 214 Ariz. 485, ¶ 10, 154 P.3d 387, 390 (App. 2007) (strict compliance with statutory requirements in civil commitment proceedings is imperative because such “proceedings may result in a serious deprivation of appellant’s liberty interests”), quoting *In re Maricopa County Super. Ct. No. MN 2001-001139*, 203 Ariz. 351, ¶ 8, 54 P.3d 380, 382 (App. 2002). We note, in addition, that we questioned whether the evaluations both psychiatrists had conducted in *Pinal County No. MH-201000029* satisfied the statutes, because neither physician had physically examined the appellant in that case to evaluate his physical health and that it appeared both had focused almost exclusively on his mental health. The evaluations Stumpf and Krasevic conducted appear to have been similarly limited and, therefore, did not strictly comply with the requirements of the statutes.

¶9 For the reasons stated, we vacate the court’s order of August 11, 2010.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge